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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 JOHN PATRICK BLACKMON,

10 Petitioner,

11 v.

12 JEFFREY A. UTTECHT,

13 Respondent.

Case No. C16-1592RSL

ORDER DENYING AMENDED
PETITION FOR WRIT OF HABEAS
CORPUS

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15 The Court, having reviewed Petitioner's amended petition for writ of habeas
16 corpus, the Report and Recommendation of the Honorable Michelle L. Peterson, United
17 States Magistrate Judge, petitioner's objections thereto (Dkt. # 42 and 44), and the
18 remaining record, hereby finds and ORDERS:

19 (1) The Report and Recommendation is approved and adopted except as noted
20 below.

21 (2) Petitioner's amended petition for writ of habeas corpus (Dkt. # 32) is
22 DENIED, and the petition and this action are DISMISSED with prejudice.
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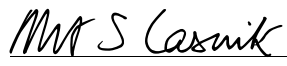
ORDER DENYING AMENDED PETITION
FOR WRIT OF HABEAS CORPUS - 1

1 (3) Under the amended version of 28 U.S.C. § 2253(c), a petitioner may not
2 appeal the denial of a habeas corpus petition unless the district court or the Ninth Circuit
3 issues a certificate of appealability identifying the particular issues that may be pursued
4 on appeal. United States v. Asrar, 116 F.3d 1268 (9th Cir. 1997). To obtain a certificate
5 of appealability, the petitioner must make a substantial showing of the denial of a
6 constitutional right. “Obviously the petitioner need not show that he should prevail on the
7 merits. He has already failed in that endeavor.” Barefoot v. Estelle, 463 U.S. 880, 893
8 n.4 (1983). Rather, he must demonstrate that the resolution of the habeas petition is
9 debatable among reasonable jurists or that the issues presented were “adequate to deserve
10 encouragement to proceed further.” Slack v. McDaniel, 529 U.S. 473, 483-84 (2000).
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12 The Court finds that the dismissal of petitioner’s claims regarding whether he
13 waived his right to testify and whether his Fifth Amendment rights were violated may be
14 debatable among reasonable jurists and deserve to proceed further. The Court certifies
15 those issues for appeal. The actual innocence claim is not, however, debatable and should
16 not be the subject of an appeal.

17 (4) The Clerk is directed to send copies of this Order to all counsel of record
18 and to Magistrate Judge Peterson.

19 Dated this 11th day of October, 2019.

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21 
22 ROBERT S. LASNIK
23 United States District Judge